



POLICE DEPARTMENT

December 18, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Charles Reilly
Tax Registry No. 916507
Warrant Section
Disciplinary Case No. 2011-6185

Police Officer Manuel Silva
Tax Registry No. 945005
Midtown North Precinct
Disciplinary Case No. 2011-6186

The above-named members of the Department appeared before the Court on October 17, 2012, charged with the following:

Disciplinary Case No. 2011-6185

1. Said Police Officer Charles Reilly, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully did fail and neglect to prepare Complaint Reports, Aided Report Worksheets, Stop, Question and Frisk Report Worksheets, and details of said incident and witnesses in his Activity Log, as required.

P.G. 207-01, Page 3, Paragraph 1	COMPLAINT REPORTING SYSTEM COMPLAINTS
P.G. 216-01, Page 2, Paragraph 8	– AIDED CASES GENERAL PROCEDURE AIDED CASES
P.G. 212-11, Page 1, Paragraph 6	STOP AND FRISK COMMAND OPERATIONS
P.G. 212 08. Page 1, Paragraph 1	ACTIVITY LOGS COMMAND OPERATIONS

2. Said Police Officer Charles Reilly, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully did fail and neglect to effect an arrest, as required.

P.G. 208-01, Page 1, Paragraph 3(b) LAW OF ARREST
ARRESTS

3. Said Police Officer Charles Reilly, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully did fail and neglect to report said incident to the patrol supervisor and platoon commander, as required.

P.G. 202-21, Page 1, Paragraph 6 POLICE OFFICER
DUTIES AND RESPONSIBILITIES

4. Said Police Officer Charles Reilly, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully reported the assignment had been completed as "10-91" - non-crime committed.

P.G. 202-21, Page 1, Paragraph 13 – POLICE OFFICER
DUTIES AND RESPONSIBILITIES

Disciplinary Case No. 2011-6186

1. Said Police Officer Manuel Silva, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully did fail and neglect to prepare Complaint Reports, Aided Report Worksheets, Stop, Question and Frisk Report Worksheets, and details of said incident and witnesses in his Activity Log, as required.

P.G. 207-01, Page 3, Paragraph 1 COMPLAINT REPORTING SYSTEM
COMPLAINTS

P.G. 216-01, Page 2, Paragraph 8 AIDED CASES GENERAL PROCEDURE
AIDED CASES

P.G. 212-11, Page 1, Paragraph 6 STOP AND FRISK
COMMAND OPERATIONS

P.G. 212-08, Page 1, Paragraph 1 – ACTIVITY LOGS
COMMAND OPERATIONS

2. Said Police Officer Manuel Silva, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully did fail and neglect to effect an arrest, as required.

P.G. 208-01, Page 1, Paragraph 3(b) LAW OF ARREST
ARRESTS

3. Said Police Officer Manuel Silva, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully did fail and neglect to report said incident to the patrol supervisor and platoon commander, as required.

P.G. 202-21, Page 1, Paragraph 6 – POLICE OFFICER
DUTIES AND RESPONSIBILITIES

4. Said Police Officer Manuel Silva, while assigned to the Midtown North (18th) Precinct, on or about October 2, 2011, at about 2300 hours, while on duty, having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger in the vicinity of West 57th Street and 10th Avenue, New York County, wrongfully reported the assignment had been completed as “10-91” - non-crime committed.

P.G. 202-21, Page 1, Paragraph 13 POLICE OFFICER
DUTIES AND RESPONSIBILITIES

The Department was represented by David H. Green, Esq., Department Advocate's Office. Respondents were represented by John P. Tynan, Esq., Worth, Longworth & London LLP.

Respondents, through their counsel, entered a plea of Not Guilty to Specification Nos. 2-4. They pleaded Guilty to Specification No. 1 and testified in mitigation of the penalty. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondents, having pleaded Guilty to Specification No. 1, are found Guilty. They are found Guilty of Specification No. 4 and Not Guilty of Specification Nos. 2-3.

SUMMARY OF EVIDENCE

The Department's Case

The Department called Sergeant Keith Geller as a witness.

Sergeant Keith Geller

Geller was assigned to the Internal Affairs Bureau (IAB). In late 2011, he investigated a matter concerning Respondents. The investigation was sparked when an article appeared in a New York City newspaper on October 7, 2011, concerning an incident five days prior.

Geller testified that two individuals were involved in an altercation on October 2, 2011. One was a taxicab driver, Person A, and the other was a passenger, Person B. Person B still was facing criminal charges as a result of his involvement in the incident. Both were interviewed by IAB.

Person A told IAB investigators that the dispute arose when he arrived at West 57th Street and Tenth Avenue, the location requested by Person B and an accompanying female passenger. Person A dropped Person B on the west side of Tenth Avenue, but Person B wanted the east side, leading to an altercation. Person A had a bite mark injury to his ear, as well as various bruises and scratches over his face and body. He received approximately 10 sutures for a laceration to his ear and was prescribed antibiotics.

During the IAB investigation, Person B stated that the dispute arose when he had only a \$100 bill to pay his fare and the driver said he could not break it. The driver “just started assaulting him.” Geller learned that Person B had a human bite mark on his right forearm, plus various scratches and abrasions.

Geller was unable, based on the statements of Person A and Person B, to determine what actually occurred.

Three or four 911 calls were made by witnesses to the incident. One of the 911 callers stated that other cab drivers had come upon the incident and attempted to help Person A. Respondents did not identify these other drivers.

Geller conducted official Department interviews of both Respondents (see Department Exhibit [DX] 1, Respondent Reilly; DX 2, Respondent Silva). Geller also obtained their Activity Log entries for the date in question (see DX 3 & 4, respectively).

Geller testified that based on what Respondents observed and were told about the incident, they should have arrested Person A, Person B, or both. This was because both individuals had visible injuries at the time of the incident. Respondents were not, however, able to determine who the primary aggressor was. Moreover, Respondents did not interview a female acquaintance of Person B who was with him in the cab. She was not involved in the dispute. Respondents neither identified nor spoke with her.

Geller asserted that Respondents should have called a patrol supervisor to the scene because they were unable to ascertain whether Person A, Person B, or both should be arrested.

Geller testified that after a conversation between Respondents and the two individuals, neither man wanted the other arrested. Geller asserted that this was not within the discretion of the officers because a misdemeanor was committed against each party.

Respondents finalized the job as 10-91, non-crime corrected. This was inaccurate because the officers were told and observed that crimes had been committed.

On October 2, 2011, Respondents' tour of duty was 1500x2335. The job was "initiated" at approximately 2305 hours.

On cross examination, Geller stated that Person A went to a taxi drivers' group concerning the incident and that organization contacted the press. IAB then spoke to Person A. The passenger was not identified yet, so the Midtown North Precinct Detective Squad (MTNPDS) was assigned to the matter. They arrested Person B and IAB spoke to him.

Geller testified that he did not interview Person A personally and had not seen photographs of his injuries. The job was finalized at "approximately" 2323 hours. Person A stated that he picked up one more fare, then went to the hospital. One of the Respondents stated that he observed blood dripping from Person A's ear.

Geller agreed that neither Respondent told the parties that they would not make an arrest. Respondents told them that if each wanted to press charges, both would be arrested. Both Person B and Person A were given ample opportunity to say they wanted to press charges. Geller agreed that it was not an abuse of discretion for Respondents not to make an arrest of either man once telling them that if they were cross-complainants, both would be arrested. Furthermore, it was a "fair comment" to make on a "low-level offense."

Geller testified that in prior assignments as a supervisor, he had been assigned as the patrol supervisor. There was "a great deal of autonomy" for the officers on patrol to deal with their sector. Geller agreed that an officer was not required to call the patrol supervisor for every street stop. Officers had the authority to stop and arrest people if necessary. This authority was derived from their training enabling them to determine whether a crime had been committed.

Thus, there was a certain latitude in determining whether the patrol supervisor must be called. It would be difficult to manage the precinct if the supervisor had to respond "to every single action."

Geller testified that the 911 callers mentioned an argument or dispute, but not injuries.

Upon examination by the Court, Geller confirmed that it was not his contention that Respondents should have been able to determine who the primary aggressor was. He was not necessarily asserting that Respondents should have arrested Person B and Person A. Rather, they "perhaps" should have called the patrol supervisor. At the very least, the individuals could have been brought to the precinct station house or issued summonses.

Geller asserted that, based on what Respondents observed and were told at the scene, they should have made an arrest for assault. When the Court pointed out that he had said something different previously, he stated, "Based on the injuries and if they weren't able to determine the primary aggressor, which would be – if there was a primary aggressor then perhaps you could just arrest one of the individuals." Their inability to make this determination "is telling them maybe you either arrest both of them or call a supervisor to the scene to assist them" in making that call. If the supervisor was not available, Respondents should have arrested both men.

Geller reasoned that Person B had said he wanted to press charges. Respondents thus would have told Person A that he was under arrest. Person A then would have said that he was injured and wanted Person B to be arrested as well. Thus, both of the men should have been arrested. Even if Respondents had not said to the men that if one was arrested, both would be arrested, Respondents still should have arrested both based on the observed physical injuries.

MTNPDS identified Person B through video surveillance from the diner where Person A picked up the passengers. Additionally, Person B had told Respondents that he worked at

Roosevelt Hospital, nearby the drop-off location. Because Person A had filed a complaint, Person B was arrested. Person B did not press charges.

One or more of the 911 callers was identified and interviewed, but none was able to say who the primary aggressor was.

On re-direct examination, Geller asserted that Respondents did not conduct a “thorough initial investigation” to determine what had occurred. They did not ask for “information” from either Person A or Person B, and neither party said that he gave the officers identification. Neither Respondent took down the names of participants or witnesses. They interviewed no one else besides Person A and Person B.

On re-cross examination, Geller testified that investigators asked Person B for his female companion’s name and telephone number. He said that he did not know, and had just met her that evening at the diner.

Respondents’ Case

Respondents both testified on their own behalf.

Respondent Silva

Respondent Silva was appointed to the Department in July 2007. He was assigned to patrol in MTN. On October 2, 2011, he was assigned to a 1500x2335 tour, first with a different officer, then with Respondent Reilly. Respondent Silva had worked with Respondent Reilly before.

At 2305 hours, Respondents responded to 57th Street and Tenth Avenue after receiving a radio run of a dispute. Upon arrival at the location, Respondent Silva observed a taxi on Tenth

Avenue between 57th and 58th Streets "with the passenger on the side." The driver was outside the vehicle. Other than that, only "the passengers, the girl he was with," was present.

Respondent Silva described the cab driver and his male passenger as angry. The female passenger was crying. Respondent Silva did not smell alcohol on either passenger, and stated that the male was not intoxicated. The male passenger was Hispanic and the driver "looked Indian."

Respondents spoke to the driver first. When Respondent Silva saw the male passenger crossing the street to talk to the officers, Respondent Silva went to him. The passenger told Respondent Silva that the driver attacked him and he defended himself. He said he was injured, complaining of a bite to his arm. Respondent Silva saw the bite mark. It was not bleeding.

Respondent Silva spoke to the passenger for about 10 minutes. During this time, Respondent Reilly talked to the driver. They were a couple of feet from Respondent Silva.

Respondent Silva asked the passenger if he wanted to press charges. The officer told him, however, that if he wanted to do so, both men would have to be arrested because the driver had "minor scratches" on his face. The passenger told Respondent Silva that he "didn't want to waste his time, that he didn't want to press charges anymore."

As for the driver, Respondent Silva did not see any blood on his shirt, but did see some scratches on his face. He did not complain of any injuries. Respondent Silva also asked the driver if he wanted to press charges, telling him that he would be arrested too because the passenger was going to press charges. The driver said he did not want to press charges and would rather leave.

When asked why he did not call for a patrol supervisor, Respondent Silva answered, "If there was an arrest made neither party wanted to press charges, so I didn't call the supervisor

over.” Because he was not going to make an arrest, it was not an unusual police occurrence requiring the notification of the patrol supervisor. Respondent Silva had handled similar cross-complaints in the past similarly. He did not seek a supervisor on those occasions.

Respondent Silva testified that Respondents did not arrest the men because they could not determine the primary aggressor and he observed no serious injuries as to make the incident a felony. This, Respondent Silva testified, would have been a mandatory arrest situation.

Respondent Silva “about twice” told both parties that they were free to press charges, but if one did, the other would have the opportunity to do so as well. He admitted making it clear that if one person were to get arrested, both would be arrested “to determine exactly what happened.”

Both men were allowed to leave. Respondent Silva believed that he was the recorder. As such, he would have finalized the job with the central radio dispatcher as 10-91, non-crime corrected. The “correction” was that no arrest was made.

On cross examination, Respondent Silva agreed that a bite mark or skin breaking scratches would be enough for a third-degree assault arrest.

Respondent Silva admitted that he did not ask the driver if he had been injured. He looked at him and made his own determination. There were scratches on his face that were bleeding.

Respondent Silva conceded that based upon his observation of both parties, at least one had committed assault in the third degree. When asked if he was “supposed to arrest if you observe that a crime has taken place,” he answered, “I determine the aggressor. If one has an injury and one doesn’t, the one . . . without the injury would go.” Respondent Silva agreed that both men had some injuries.

Respondent Silva disagreed that the reason he could not determine the primary aggressor was that he “never bothered to try to find out.” After being confronted, however, with a contradictory answer from his official Department interview, he concurred with the Advocate’s suggestion. The female passenger was standing at the male passenger’s side the entire time, crying. Respondents did not speak to her or get her information. Person B told Respondent Silva that she was his wife. (In his official Department interview, Respondent Silva added that he did not ask for a callback to the 911 caller).

Respondent Silva did not recall any other cab drivers being present, although the male passenger said something about his property being missing, claiming that another driver might have taken it. He did not “see another male take his wallet from him.” The passenger did not want to write a report and Respondent Silva did not take any police action concerning the matter, including writing anything down.

Respondent Silva claimed that if his tour was to end at 2335 hours, and he was not then assigned to a job, he would return to the station house at 2335 hours. He denied that officers were allowed about 10 minutes to change out of uniform.

Respondent Silva stated that he told the parties at the same time that if one wanted to press charges, and the other decided to as well, they both would be arrested. Respondent testified that if only one of the men wanted to press charges, the other one would have been arrested.

Respondent Silva admitted not writing down any participant’s name in his Activity Log. (In his official interview, he stated that he asked the male passenger’s name but did not take it down. He thought that his first name was Jose).

Respondent Reilly

Respondent Reilly was appointed to the Department on June 30, 1995. He was assigned to patrol in MTN.¹ On October 2, 2011, he originally was working with a different officer, and then was reassigned to work with Respondent Silva.

Respondent Reilly made an arrest that day at 1627 hours. Later, he responded to a radio run of a dispute at the corner of 57th Street and Tenth Avenue. He recalled that Respondent Silva was the operator. Approximately one block north of the intersection, Respondent Reilly observed a taxi and three people standing outside it. One was the cab driver.

Respondent Reilly approached the cab driver and asked him what happened. Respondent Silva did so with the "other party." The driver said that he picked up a fare on Tenth Avenue in Chelsea, but there was a dispute regarding at which corner the passenger wanted to be dropped off. There was also an argument over the fact that the passenger only had a \$100 bill for payment. (In his official Department interview, Respondent Reilly mentioned only the side-of-the-street issue as the reason for the dispute).

Respondent Reilly observed some "not very large" scratches on the driver's face and neck. He was not complaining about them.

Respondent Reilly also spoke to the passenger. He concurred with the driver's statement as to the genesis of the dispute. Also, the passenger said, another cab arrived and tried to block any potential escape; the passenger's driver thought he was going to ditch on the fare. "[A] physical encounter ensued between the two of them."

The passenger had scratches on his face also, as well as red welts on his right forearm. The skin was not broken on his arm.

¹ Shortly after the trial, Respondent Reilly was transferred to the Warrant Section in an investigative-track assignment.

After interviewing both men, Respondent Reilly told them that he could not determine which of them was the primary aggressor. His choices were that "you can both go to jail or you can both walk away."

Respondent Reilly "ha[d] to" tell the driver twice that if he wanted the passenger arrested, "he's probably going to be arrested also." The driver said that he just wanted to leave, and did so. Over the next two minutes, the passenger said that he just was going to head over to [REDACTED] Hospital, where he worked, to get the mark on his arm examined.

Respondent Reilly insisted that he did not tell the parties that he did not want to make an arrest.

Respondent Reilly's tour ended at 2335 hours. If he had arrested the individuals at 2300, he would have incurred overtime. That was not why he failed to make the arrests.

Respondent Reilly testified that the injuries involved did not create a mandatory-arrest scenario because it was neither a family offense nor a felony. The rules of the Department gave him discretion to make an arrest or not.

Respondent Reilly did not call for the patrol supervisor because it was not an arrest situation and there was no other reason why he needed a supervisor's input. The supervisor that night was Sergeant Kevin Burns. Burns had less time on the job than Respondent Reilly.

On cross examination, Respondent Reilly denied thinking that his remarks to the parties would influence whether they wanted to press charges. He insisted that he only was telling them their options.

Respondent Reilly did not see blood or "oozing" on either party. The driver said that the male passenger bit his ear. The passenger said that the mark on his arm was a bite mark.

Respondent Reilly agreed that he did not write down the pedigree information of either party in his Activity Log. He did not ask them for identification. He did not take down the taxi's medallion number.

Respondent Reilly did not recall speaking to the female passenger. He did not know if she was a witness to the dispute.

Respondent Reilly "[p]retty much" took every opportunity to work overtime that arose. For that reason he would have been the arresting officer here, if arrests had been made. Respondent Silva would not have been necessary for the arrest processing.

No other taxi was on the scene when Respondents arrived. Respondent Reilly did not attempt to determine the other hack's identity or the license plate number.

Respondent Reilly did not know if Burns was on another job or doing something more pressing.

FINDINGS AND ANALYSIS

The facts in this case mostly are undisputed. Respondents were on patrol in the Midtown North Precinct. They responded to a call of a dispute at the corner of West 57th Street and Tenth Avenue. A cab driver, Person A, was having a dispute with a passenger, Person B. Respondents interviewed the participants. The dispute concerned the side of the avenue on which Person B should be dropped off, plus Person A's refusal to change Person B's \$100 bill. Also present was a female passenger, an acquaintance of Person B. Her identity never has been revealed.

There was evidence of physical injury to both Person A and Person B. The passenger had scratch marks and a human bite mark. The driver had scratches as well, and possibly was

bleeding. Respondents told both parties that they could press charges if they so wished. If either of them pressed charges, however, the officers would have to arrest that person. It was not disputed that this admonition had the purposeful effect of warning both parties that, if either one of them wanted an arrest, they both would be arrested; anyone pressing charges would have charges pressed against himself in retaliation. Nor was it disputed that the warning was not improper. Both Person B and Person A declined to prosecute. They left the scene, as did Respondents.

Respondents have pleaded Guilty to Specification No. 1. They admitted that, even though the situation was resolved with cross complainants declining to press charges, they should have filled out complaint reports and aided reports, and placed more detailed information into their Activity Logs.

Specification No. 2, however, charges that Respondents, “having responded to a dispute which resulted in physical injury, involving a taxi driver and his passenger . . . wrongfully did fail and neglect to effect an arrest, as required.” The cited Patrol Guide procedure, § 208-01 (3)(b), however, states only that officers may make an arrest in such situations. The Department provided no authority for the proposition that an arrest for a misdemeanor is mandatory where there are cross-complainants, even where there is physical injury (the Patrol Guide procedures are different for family offenses and domestic violence, see Patrol Guide § 208-36). It makes little difference that the physical injury may have resulted in bleeding. Without more, that is still a misdemeanor-level injury.

The investigator testified that it was not misconduct for Respondents to tell Person A and Person B that, in essence, if one of them wanted to press charges, they both would be arrested. If

that is the case, the Court does not see how it could be misconduct to decline to arrest either complainant once both Person A and Person B said that they did not want to prosecute. The Department posited that Respondents could not have made an informed determination as to who was the primary aggressor without speaking to all possible witnesses, like the female passenger. But Respondents are not charged with failing to speak to witnesses or otherwise properly investigate the matter. Cf. *Case No. 2010-1844* (Mar. 13, 2012) (where complainants differed on details of incident, specification charged that officer “failed to properly identify the complainants involved in a dispute, failed to properly identify the possible perpetrator, failed to canvass for surveillance footage, and failed to canvass for eye witnesses”). Rather, the officers are charged with failing to make an arrest. With the knowledge they acquired that both men received physical injuries at a misdemeanor level arrests were not mandated if the men did not desire it. The Department’s argument that Respondents’ failure to make an arrest was an abuse of discretion is unsupported by reference to any Department rule or the facts of this case. Accordingly, Respondents are found Not Guilty of Specification No. 2.

Specification No. 3 alleges that Respondents should have called the patrol supervisor pursuant to Patrol Guide § 202-21 (6). That procedure states that a police officer must tell the patrol supervisor (and platoon commander) of “any unusual crime, occurrence or condition.” The Department did not prove that there was anything unusual here to which a supervisor needed to respond. This was not an ongoing criminal investigation or an arrest situation. Police Officers are not required to call the supervisor to sign off on every decision. The matter of Person A and Person B had been resolved to the satisfaction of both parties. It was over. There was nothing for the patrol supervisor to do. As such, Respondents are found Not Guilty of Specification No.

The Court finds Respondents Guilty of the fourth specification, finalizing the job with the wrong radio code signal. They transmitted it as 10-91, non-crime corrected. Because the incident involved crimes, just ones that the complainants did not want to prosecute, a more accurate final disposition would have been 10-90Y, unnecessary. This is because police assistance was requested but turned out not to be required because the individuals involved decided they did not, in the end, want police intervention.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent Reilly was appointed to the Department on June 30, 1995. Respondent Silva was appointed on July 9, 2007. Information from their personnel files that was considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondents have been found Guilty of failing to prepare the proper paperwork after responding to a dispute between a cab driver and passenger. While the situation was resolved with cross-complainants declining to press charges, Respondents should have listed their names in their Activity Logs, and filled out complaint reports, aided reports and the like to ensure that the incident was documented. This was not simply to cover themselves, see *Case Nos. 84896/09 & 84897/09*, p. 12 (Feb. 15, 2011). Rather, the dispute itself, the parties, and the disposition should have been documented so that the Department had a record of it. This would be for crime-reporting statistics and simply so that supervisors know what officers have done on a daily basis. A vivid example of the need for documentation came about in this case. The cab driver, Person A, apparently decided, after leaving Respondents, that he did want to press charges and

contacted a taxi drivers' advocacy group. That organization contacted the press, which reported that Department officers had responded to an assault on a cab driver and but refused to arrest the assailant. When the Internal Affairs Bureau began an investigation, they found that Respondents were assigned to the job but made no report of it (other than listing it in their Activity Logs without the names of the parties and marking the job 10-91). It appeared that they had mostly blown it off.

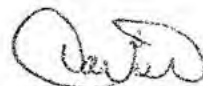
The Department suggested a penalty of 15 vacation days for each Respondent. Their counsel suggested that the penalty should be that they be warned and admonished. In the Court's view, however, no reminder should be necessary to veteran officers that they are required to document the response to a police incident like a dispute. That is something they should already know.

A penalty of 10 days is reasonable. Respondents took proper police action by informing two non-domestic cross-complainants, both of whom had minor physical injuries, that they could press charges if they wished, but doing so likely would result in both being arrested. There is no indication that, as the Department speculated, Respondents failed to act because their tour was near its end and they did not want to have to do overtime processing the arrest. In fact, Respondent Reilly testified that he would have taken the arrests and liked incurring overtime. In essence, Respondents acted properly but failed to document that proper action.

As such, the Court recommends that a penalty of 10 vacation days be imposed upon each Respondent. See Case No. 83259/07 (Nov. 18, 2009) (sergeant forfeited 10 vacation days where two of his officers stopped an individual for suspected drug possession, and recovered cash; after individual was released when substance turned out to be religious amulet, sergeant failed to

ensure that a field test report and property voucher were filled out, that desk officer was informed, and that command log entry was made).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

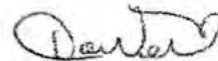
 **APPROVED**
FEB 01 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHARLES REILLY
TAX REGISTRY NO. 916507
DISCIPLINARY CASE NO. 2011 6185

In 2009 and 2011, Respondent Reilly received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 4.5 "Extremely Competent/Highly Competent" in 2010. He has been awarded three medals for Meritorious Police Duty. In his 17 years of service, he has reported sick on 59 occasions, nine of which were for line-of-duty injuries. Respondent Reilly has no prior formal disciplinary record.

For your consideration.



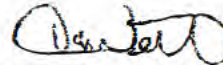
David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MANUEL SILVA
TAX REGISTRY NO. 945005
DISCIPLINARY CASE NO. 2011-6186

In 2009 and 2011, Respondent Silva received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 3.5 "Highly Competent/Competent" in 2010. [REDACTED]
[REDACTED]
[REDACTED]

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials